IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.44 OF 2005

Shri Vasudeo Sundarrao Hedulkar Petitioner

Vs.

Smt.Sunandabai D. Kadav & ors. Respondents

Mr.P.M.Pradhan for petitioner.

CORAM: B.H.MARLAPALLE,J.

June 08, 2005.

P.C.:

1. Heard the learned counsel for the petitioner who had filed an application at Exhibit 22 in Regular Civil Suit No.96 of 2003 in which he was impleaded as defendant no.4, for rejecting the said suit on the ground of jurisdiction and maintainability. The said application has been rejected by the learned Jt.Civil Judge Junior Division on 7/2/2005. The said order is challenged in this revision application.

2. The applicant has contended that in R.C.S. No.525 of 1992 the plaintiff Sunandabai Dwarkanath Kadav in Regular Civil Suit No.96 of 2003 had made an application through her general power of attorney Krishnakumar Balram Sonawale and on 22-2-2000 that application was disposed of as not pressed for by the trial Court. R.C.S.No.525 of 1992 was thereafter decreed in favour of the present petitioner and when the Respondent nos.2, 3 and 4 had challenged the same in Civil Appeal No.272 of 2000 the decree was modified. The lower Appellate Court held that the present appellant would be entitled for a shop premises

admeasuring only 58 sq.ft. instead of admeasuring 20 x 12 sq.ft. The principle of res judicata was pressed and the trial Court was not impressed by the arguments advanced by the petitioner.

3. The reliefs prayed for in Regular Civil Suit No.96 of 2003 read as under:

> (1) It be declared that the Judgment and decree passed in RCS No.525/1992 is not binding on plaintiff as plaintiff was not party to the suit.
>
> (2) It be declared that tenancy of plaintiff is still subsisting in respect of the tenanted premises.
>
> (3) The defendant Nos.1 to 3 may be ordered and decreed to hand over possession of a premises on the Ground Floor of the building constructed by them admeasuring 60 sq.ft. approximately on tenancy basis.
>
> (4) The defendant Nos.1 to 3 may be restrained by an order and injunction of this Hon'ble Court from giving possession of a shop on the ground floor admeasuring 60 sq.ft. to defendant No.4 on tenancy basis in newly constructed building.
>
> (5) The defendant Nos.1 to 3 may be directed to keep one shop on the Ground Floor admeasuring 60 sq.ft. on tenancy basis for plaintiff in newly constructed building.

4. There is no dispute that the petitioner was the sub-tenant of the present respondent no.1 who has filed R.C.S. No.96 of 2003 and with the original landlords i.e. respondent nos.2 to 4 it was agreed between the parties that the present petitioner would get about 60 sq.ft. premises. The trial Court after referring to these facts has noted that the respondent no.1 was not impleaded as one of the defendants in Regular Civil Suit No.525 of 1992 and

the application filed purportedly on her behalf and marked as Exhibit 41/3 was in fact filed by the power of attorney who was also examined as a witness and it was his endorsement on the basis of which the application was disposed of as not pressed. These purported steps taken by the power of attorney do need to be gone into during the trial of the present suit and it cannot be presumed that all the reliefs prayed therein would be granted by the Court below. The trial Court would be aware that the decree passed in RCS No.525/1992 has been modified by the lower appellate Court and the present petitioner's share has been confirmed in respect of the premises admeasuring 58 sq.ft. This is not a fit case where respondent no.1 could be non-suited at the threshold and without any further enquiry into the suit moved which would determine her share in the commercial premises.

5. Hence, there is no merit in the challenge to the impugned order and the revision application is, therefore, rejected summarily.

(B.H.MARLAPALLE,J.)